Supreme Court, U.S.
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No.

In the Supreme Court of the United States

RONALD J. ALLISON & MARTHA J. ALLISON,

Petitioners,

vs.

THE UNITED STATES OF AMERICA, et.al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE NINTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

For the Petitioners:

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QUESTIONS PRESENTED FOR REVIEW

The Petitioners, RONALD J. ALLISON & MARTHA J. ALLISON, hereby present the following four questions for the review of the decisions of the Ninth Circuit Court of Appeals by the United States Supreme Court:

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE CONDUCT OF THE RESPONDENTS, IS CONTRARY TO & IN DIRECT VIOLATION OF THE RIGHTS & PROTECTIONS GRANTED THE PETITIONERS BY THE 4TH, 5TH, 7TH & 10TH ARTICLES IN AMENDMENT TO THE ORIGINAL ORGANIC CONSTITUTION OF THE UNITED STATES OF AMERICA, (U.S.C.A. Constitutional Amendments 4, 5, 7, & 10).

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE CONDUCT OF THE RESPONDENTS IS CONTRARY TO & IN DIRECT CONFLICT WITH THE RELEVANT DECISIONS OF THIS COURT, OTHER DECISIONS OF THE NINTH CIRCUIT, & OTHER CIRCUIT COURTS OF APPEALS.

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS IS CONTRARY TO & IN DIRECT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT, OTHER DECISIONS OF THE NINTH CIRCUIT, & DECISIONS OF OTHER COURTS OF APPEALS, WITH REGARD TO THE UNIQUE STATUS OF THE PETITIONERS.

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS IS ERRONEOUS WITH REGARD TO THE CONDUCT OF THE INTERNAL REVENUE SERVICE & THE U.S. DISTRICT COURT BELOW, AS TO CONSTITUTIONAL VIOLATIONS, & VIOLATIONS OF STATUTORY LAW, & RELEVANT RULES & REGULATIONS.

PARTIES TO THE PROCEEDING

This case was initiated by the Plaintiffs, the Allisons, as a state of Montana Sixteenth Judicial District Court Quiet Title action. The parties to the action, as identified then, were:

RONALD J. ALLISON &
MARTHA J. ALLISON,

Plaintiffs,

vs.

The City of Forsyth, Rosebud County, Montana; Larry Burns & Larry's Service Center, Baker, Montana; The United States of America; & the U.S. Internal Revenue Service; and the Unknown Heirs, Devisees, Assigns, and Creditors of the City of Forsyth, Rosebud County, Montana; Larry Burns & Larry's Service Center, Baker, Montana; & the United States of America; & the U.S. Internal Revenue Service; and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in, or lien upon the real and personal property interests described in the Complaint adverse to the Plantiffs' ownership or any cloud upon the Plantiffs' title thereto and sole ownership thereof, whether such claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued,

Defendants.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Petitioners, RONALD J. ALLSION & MARTHA J. ALLISON, both appearing Pro Se, in the above entitled cause of action, respectfully pray that a WRIT OF CERTIORARI issue from the United States Supreme Court to review the MEMORANRUM of the Ninth Circuit Court of Appeals three judge panel of Justices Wallace, Fernandez, & McKeown, dated September 26, 2000, as well as the ORDER of the Ninth Circuit Court of Appeals three judge panel of Justices Wallace, Fernandez, & McKeown, dated January 2, 2001.

OPINION BELOW

The MEMORANDUM, dated September 26, 2000, and the ORDER, dated January 2, 2001, both by the three judge panel of Justices Wallace, Fernandez, & McKeown, of the Ninth Circuit Court of Appeals were both issued as unpublished opinions of the Court. Both the MEMORANDUM and ORDER appear in the Appendix to this PETITION FOR WRIT OF CERTIORARI. The ORDER of Judge Jack Shanstrom, in the underlying cause of action, No. CV-99-BLG-JDS, in the United States District Court for the District Court of Montana, issued June 9, 1999, appears in the Appendix to this PETITION FOR WRIT OF CERTIORARI.

JURISDICTION

The MEMORANDUM of the three judge panel of Justices Wallace, Fernandez, & McKeown, of the Court of Appeals for the Ninth Circuit was entered on September 26, 2000. A timely Petition for Rehearing, by the Panel was filed, pursuant to Rule 40, Federal Rules of Appellate Procedure on November 10, 2000. The Petition for Rehearing, by the panel was denied on January 2, 2001. The Allisons, the Petitioners, then gave Notice of Intent to Petition for Rehearing, En Banc, pursuant to Rule 35, Federal Rules of Appellate Procedure on January 16, 2001. On January 30, 2001 the Petition for Rehearing, En Banc, was filed by the Petitioners. The Petition for Rehearing, En Banc, was returned to the Petitioners, unfiled, with a copy of the January 2, 2001 ORDER attached. This PETITION FOR WRIT OF CERTIORARI was filed within ninety (90) days of the January 2, 2001, ORDER date. The jurisdiction of the United States Supreme Court is now invoked under Section 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

This case began with the filing of a Complaint in the State of Montana Sixteenth Judicial District Court, for multiple forms of relief, including for Quiet Title. See Docket Sheet (DS #3). The Allisons sought to Quiet Title to certain real and personal properties of theirs, which were searched for, seized, and subsequently sold by the U.S. Internal Revenue Service to the other named Defendants, Larry Burns and City of Forsyth, Montana. The Allisons maintained that the actions of the IRS, against them and their property, were both wrongful and illegal, for numerous reasons, including the fact that the search of the real peoperty was conducted without a Search Warrant or a Summons. Only a Writ of Entry was obtained by the U.S. Attorney, from U.S. District Judge Jack Shanstrom of Montana.

The Internal Revenue Service had asserted various claims against Ronald J. Allison only, (never Martha J. Allison), for allegedly delinquent federal income taxes. At the time, and on several occasions prior to the search and seizure, conducted illegally by the IRS, Ronald J. Allison had directly challenged any valid, legal authority of the United States Internal Revenue Service over him and his properties. When Mr. Allison did so challenge the authority, jurisdiction, and venue of the IRS, over himself and his property, the IRS response was to obtain from Judge Shanstrom a "Writ of Entry".

Under the alleged authority of the Writ of Entry, issued by Judge Shanstrom, the IRS then searched the real property; solely owned by Martha J. Allison, the innocent spouse, looking for any personal property of Ronald J, Allison. While the IRS had no claims or controversies against Martha J. Allison, and still do not, they not only seized Allison's personal property, but the solely owned real property of Martha J. Allison. This seizure was made under a "nominee" or "alter ego" designation by a lone IRS agent, the same IRS Agent whom Mr. Allison had previously directly challenged the legal authority, jurisdiction, and venue of the IRS with. Such a determination of the "status" of Mrs. Allison was made directly as a result of and in retribution for Mr. Allison's challenges, No responses were ever received from the IRS Agent involved.

As a result, the IRS seized Mrs. Allison's solely owned real property and the building that was located on said real property. The IRS also seized Mr. Allison's muffler shop equipment, tools, machinery, and inventory for his muffler repair and replacement business.

Several months later, using a substantially undervalued (and disputed) appraisal of the real and personal properties of the Allisons which were seized, the IRS wrongfully and illegally sold the real and personal properties in question. That out-of-county sale, conducted in Yellowstone County, Montana, for Rosebud County property, was conducted in violation of IRS's own statutory authority and without legally delegated sale authority.

As a result, the City of Forsyth, Montana, bid the minimum acceptable bid price for the real property, and it was sold by the IRS to that local government entity. At the same sale, by Sealed Bid, a Larry Burns, d/b/a Larry's Service Center, of Baker, Montana, purchased the entire lot of personal and business property, also at the minimum bid price.

Consequently, the Allisons did file their Complaint for Quiet Title and other relief, as against the City of Forsyth, Montana, Larry Burns, the United States of America, and the U.S. Internal Revenue Service. Each party was subsequently properly served. (See DS #3).

The Montana State Court action was filed on February 26, 1999. But, prior to any answers being filed in the case, or any other responsive pleadings by the other named defendants, the United States/IRS, submitted a Notice of Removal which removed the case from Montana's state district court to the United States District Court for the District of Montana. (See DS #1). Only Notices were sent. No motions were filed, in either state or federal court, nor were there any Orders directing such removal, but the state court clerk did certify removal on March 10, 1999. (See DS #7).

When both Burns and the City attempted to file Motions to Dismiss in state court, those were returned due to federal court removal. Burns submitted the same motion, with the same caption, and no brief, to the federal court, which accepted it. Burns never served the Allisons. The City of Forsyth submitted its same motion and brief to Federal court as state court. The City's motion and brief were untimely, never served on the Allisons, and contained invalid and incorrect service of process statements. Yet, they were filed by the federal court, improperly.

Next, the Allisons learned that the judge assigned to the case was none other than Jack Shanstrom, the same judge who had issued the "Writ of Entry" used initially by the IRS as a basis for their improper search and seizure, without any search warrant or summons. They then filed motions to recuse Judge Shanstrom, or alternatively, to disqualify Judge Shanstrom from sitting on the case. (See DS #11). They based their argument on the fact that Shanstrom was already prejudiced and biased against them given his Writ of Entry actions. He now was in a position to sit in judgment on actions he had previously taken. Shanstrom had clearly shown his bias in favor of the IRS and against the private citizenry. It was clear that the Allisons were lumped into the "freeman" category, as that incident was occurring at the same time. The Allisons were natural born, sovereign, non-taxpayer citizens and residents of Montana, attempting to challenge the authority, jurisdiction, and venue, of the IRS, a legitimate and fundamental challenge to any federal government agency's actions. Shanstrom did not take any action, at that time, with regard tohis recusal or disqualification from sitting on this case.

As the motions of the City of Forsyth and Burns were untimely, and improperly filed, the Allisons sought entry of default motions against those defendants, by the clerk of court. (See DS #19). But, instead of a clerk's entry of default, they did receive an Order denying their motions for default. (See DS #22).

The Allisons also filed a motion to remand the case back to state district court, from the federal district court, for failure of the U.S./IRS to follow proper removal procedures. (See DS #24). Next, the U.S./IRS filed a motion to Dismiss or for Summary Judgment.

In response the Allisons filed motions to defer consideration of the U.S./IRS motions for dismissal/summary judgment, until such time as necessary discovery could be conducted and the matter brought before the court for a trial on the merits. (See DS #32, 33)

On May 7, 1999, the IRS filed affidavits of IRS agents involved in the case. (See DS #40). The Allisons did then request denial of the U.S./IRS motion for lack of required statement of uncontroverted facts and to respond to the U.S. Reply Brief and affidavits filed. (See DS #41, 42).

Then, the case sat, before Judge Shanstrom, for some five months without any progression towards resolution. Allisons next requested hearings on their pending motions and requested rulings, on June 16, 1999. (See DS #45, 46, 47, 48, 49, 50, 51.)

In response, Judge Shanstrom issued his Order, on June 29, 1999, (See DS #53) in which he did:

a. deny the Allisons motion for recusal or disqualification of him as sitting judge.
b. granted Larry Burns' motion to dismiss,
c. granted the City of Forsyth's motion to dismiss,
d. denied the Allisons' motion to remand to the state court from the federal court,
e. denied the Allisons' motion for reconsideration of the Court's denial of entry of default,

f. granted the U.S./IRS motion to dismiss, or alternatively, for summary judgment,
g. denied the Allisons' motions to defer the consideration of the motions until meaningful discovery and a trial on the merits could be held, and,
h. ordered that all of the Allisons' causes of action be dismissed with prejudice.

Judgment was entered, in accordance with this Order, by the Clerk, on June 29, 1999. (See DS #54).

As a result of this Order, by Judge Jack Shanstrom, effectively dismissing the Allisons' causes of action, and denying their motions, the Allisons filed their Notice of Appeal to the Ninth Circuit Court of Appeals, on July 8, 1999. (See DS # 56).

The Allisons filed a Joint Opening Brief with the Court of Appeals on September 10, 1999, and a Joint Reply Brief on November 17, 1999.

It was not until September 26, 2000, that the Ninth Circuit Court of Appeals, three judge panel of Justices, Wallace, Fernandez, and McKeown, finally issued an unpublished MEMORANDUM which, in effect, affirmed the decisions of Judge Shanstrom in the court below.

Consequently, the Allisons filed a Petition for Rehearing, by the panel, on November 10, 2000. That same panel of Justices, Wallace, Fernandez, and McKeown, issued an ORDER, on January 2, 2001, which denied the petition for a panel rehearing and other motions of the Allisons.

As a result, the Allisons gave notice of their intent to seek a Rehearing, En Banc, on January 16, 2001 and did file such a Petition for Rehearing En Banc, pursuant to Rule 35 of

the Federal Rules of Appellate Procedure, on January 30, 2001. Shortly thereafter, the copies of the Petition for Rehearing En Banc and Appendix in Support were returned to the Allisons with only a copy of the January 2, 2001 ORDER attached.

As a result, the Allisons, have now filed this timely PETITION FOR WRIT OF CERTIORARI, well within the ninety (90) days of the last dispositional ORDER of the Court of Appeals, which was dated January 2, 2001.

SUMMARY OF ARGUMENT

To briefly summarize the argument of the Petitioners, the Allisons, the court needs to fully examine the issues (questions) which were presented for review at the outset in this Petition for a Writ of Certiorari.

The Allisons maintain that the Ninth Circuit Court of Appeals three judge panel of Justices Wallace, Fernandez, and McKeown, in their September 26, 2000 MEMORANDUM, unpublished opinion, were clearly in error and that this court should review that decision.

The Allisons maintain that the decision below, with regard to the conduct of the Respondents in the case, United States, U.S. Internal Revenue Service, the City of Forsyth, Montana, and Larry Burns, combined, is quite clearly contrary to and in direct conflict with Constitutional protections granted the Allisons under the 4th, 5th, 7th, and 10th Articles in Amendment, as well as under the 14th and 16th Amendments to the Original Organic Constitution of the United States.

Also, the Allisons maintain that the decision of the Ninth Circuit Court below, is contrary to a number of controlling, relevant decisions issued by this court, other decisions of the Ninth Circuit, and decisions of other Circuit Courts of

Appeals, as will be outlined hereafter.

In addition, Mr. Allison's status as a natural born, sovereign, unenfranchised non-taxpayer citizen and resident of the state of Montana and of the United States of America must be understood.

Finally, the Allisons assert and maintain that the actions of the federal government's Internal Revenue Service, which were upheld, and affirmed by the U.S. District Judge, as against the Allisons are suspect and do constitute violation of the Allison's Constitutional rights and protections, and do constitute violations of statutory law governing the IRS, as well as violations of the IRS implementing rules and regulations.

REASONS FOR GRANTING THE WRIT

The Petitioners, RONALD J. ALLISON & MARTHA J. ALLISON, have formulated the four following reasons as to why the United States Supreme Court should grant them a WRIT OF CERTIORARI to review the decisions of the Ninth Circuit Court of Appeals, in this case. Those are:

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE CONDUCT OF THE RESPONDENTS, IS CONTRARY TO & IN DIRECT VIOLATION OF THE RIGHTS & PROTECTIONS GRANTED THE PETITIONERS BY THE 4TH, 5TH, 7TH & 10TH ARTICLES IN AMENDMENT TO THE ORIGINAL ORGANIC CONSTITUTION OF THE UNITED STATES OF AMERICA, (U.S.C.A. Constitutional Amendments 4, 5, 7, & 10).

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE CONDUCT OF THE RESPONDENTS IS CONTRARY TO & IN DIRECT CONFLICT WITH THE RELEVANT DECISIONS OF THIS

COURT, OTHER DECISIONS OF THE NINTH CIRCUIT, & OTHER CIRCUIT COURTS OF APPEALS.

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS IS CONTRARY TO & IN DIRECT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT, OTHER DECISIONS OF THE NINTH CIRCUIT, & THE DECISIONS OF OTHER COURTS OF APPEALS, WITH REGARD TO THE UNIQUE STATUS OF THE PETITIONERS.

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS IS ERRONEOUS WITH REGARD TO THE CONDUCT OF THE INTERNAL REVENUE SERVICE & THE DISTRICT COURT BELOW, AS TO CONSTITUTIONAL VIOLATIONS, & VIOLATIONS OF STATUTORY LAW, & RELEVANT RULES & REGULATIONS.

A. WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE CONDUCT OF THE RESPONDENTS, IS CONTRARY TO & IN DIRECT VIOLATION OF THE RIGHTS & PROTECTIONS GRANTED THE PETITIONERS BY THE 4TH, 5TH, 7TH & 10TH ARTICLES IN AMENDMENT TO THE ORIGINAL ORGANIC CONSTITUTION OF THE UNITED STATES OF AMERICA, (U.S.C.A. Constitutional Amendments 4, 5, 7, & 10).

The Petitioners, the Allisons, have alleged that the conduct of the Respondents, specifically the United States and its federal government agency the Internal Revenue Service violated the protections and rights granted to the Allisons by several Articles in Amendment to the Original Organic Constitutional of the United States of America. (U.S.C.A. Const. Amendments).

Thus, it is imperative for this court, on Certiorari review of the Ninth Circuit Court panel's MEMORANDUM, to return to and revisit the basis for our entire legal system, the Original Organic Constitution of the United States of America, and those Articles in Amendment to that constitution, as opposed to the provisions of the federal (United States) constitution. Our constitution is the basis and foundation for all our laws, and all laws since passed must ultimately pass Constitutional muster if they are to ever survive judicial scrutiny. The Allisons have alleged violations of their Constitutional rights and protections, including Article I, Section 8, Clause 1; Article I, Section 9, Clause 4; Article VI, Clause2 of the Original Organic Constitution of the United States of America, in support of their arguments in this case.

> Article I, Section 8, Clause 1, states, in pertinent part: "Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common defence and general Welfare of the United States; but all Duties, Imposts, and Excises shall be uniform throughout the United States;"
>
> Article I, Section 9, Clause 4, states in pertinent part: "Section 9. . . . No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken."
>
> Furthermore, Article VI, Clause 2, states, in pertinent part:
> " This Constitution, and all Laws of the United States which shall be made in Pursuance thereof; all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary not withstanding."

In Addition, the Petitioners, the Allisons have maintained that the conduct of the government and its agency the Internal Revenue Service, have directly violated the protections and rights provided them under the 4th, 5th, 7th, and 10th Articles in Amendment to the Original Organic Constitution of the United States of America. (U.S.C.A. Const. Amend. 4, 5, 7, & 10). Those four Articles in Amendment are part of what is now commonly called the Bill of Rights, which was ratified in 1791.

> Article in Amendment IV, states as follows:
> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (See also U.S.C.A. Constitutional Amendment 4).

Article in Amendment V, also ratified in 1791, states as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." (See also U.S.C.A. Constitutional Amendment 5.)

> Article in Amendment VII, dealing with the right to a trial by jury of one's peers, and also ratified in 1791,

states as follows:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of common law." (See also U.S.C.A. Constitutional Amendment 7.)

In addition the Allisons maintain that Article in Amendment 10 comes into play in their case. Article in Amendment X, passed also in 1791 states as follows:

> "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, respectively, or to the people". (See also U.S.C.A. Constitutional Amendment 10).

The Petitioners, the Allisons, maintain that the conduct of the United States (federal government) and its federal agency, the Internal Revenue Service violated each of the protections and rights granted to the Allisons as outlined above, & specifically the 4th, 5th, 7th, and 10th Articles in Amendment to the Original Organic Constitution of the United States of America, as well as provisions of the 14th and 16th Amendments to the United States Constitution. Those Constitutional provisions are the supreme law of the land, and cannot be overridden by any laws, passed by Congress and signed by the President (statutory law) or case law that is perpetuated by any Court in the land.

Any such statutes and case law must be first squared with the Constitution and the Articles in Amendment to that Constitution, if they are going to pass Constitutional muster. Any laws which are found to be unconstitutional or in violation of the Constitution, are then, in effect, deemed "null and void". It is abundantly clear that the decision of the Ninth Circuit Court panel in its MEMORANDUM, does not pass Constitutional muster.

It remains an uncontrovertible fact that the Sixteenth Amendment to the Constitution, by virtue of its enactment by Congress, is an "excise tax". Petitioners' examination of the legislative history and legislative intent, indicates the 16th Amendment was enacted to tax the corporations and other entities which are artificial creations of the government, and subject to the whims, rules, and regulations of the federal United States government for their existence. The 16th Amendment is fraudulently being applied to individuals when it is in reality, a corporation excise tax.

In particular, to understand that amendment, this Court should examine the Congressional Record-Senate, page 1568, April 28, 1909, regarding Senate Joint Resolution 25; page 3377, June 17, 1909, regarding Senate Joint Resolution 39; pages 3344-3345, June 16, 1909, regarding President Taft's address to Congress, which outlined and detailed the requirements for passage of the 16th Amendment; and page 3900, June 28, 1909, regarding the language of Senate Joint Resolution 40, which became the 16th Amendment. That language is as follows:

> "Article XVI. The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration."

S.R.J. 40 was the final draft of what would become the 16th Amendment. Yet, the federal government would have us believe that the 16th Amendment somehow negated the power of Article I, Section 9, Clause 4 of the Original Organic Constitution of the United States of America. It did not. The passage of the 16th Amendment did not extend the taxing powers of the federal government to new or excepted subjects. See *Stanton v. Baltic Mining Co.*, 240 U.S. 103, *Peck v. Lowe*, 247 U.S. 165, *Eisner v. MaComber*, 252 U.S. 189, and *Brushaber v. Union Pacific Railway Co.*, 240 U.S. 1. Ronald J. Allison, being a natural born sovereign non-taxpayer, cannot have the 16th Amendment corporate excise tax legally applied to him. He does not

qualify. Such application is unconstitutional as to him, given his status. See *Pollock v. Farmers Loan Trust Co.*, 157 U.S. 429, and *Miller v. Standard Nut & Margarine Co.*, 284 U.S. 498.

It should be abundantly clear, from the standard set in *G.M. Leasing v. United States*, 429 U.S. 338, that the warrantless search and seizure of Allisons' properties was in violation of Articles in Amendment 4 & 5. By dismissing this action, with prejudice, federal Judge Shanstrom denied the Allisons their 7th Article in Amendment, right to a trial by jury. Trial by Jury was demanded in the Complaint. This case was decided only on briefs. No hearing was ever held in District Court. The Allisons further contend that Constitutional powers not given to the federal government remain the purview of the states, or the people themselves, a violation of their 10th Article in Amendment rights.

The conduct of the Respondents and the Courts below violate Amendments 4, 5, 7, and 10 of the Constitution of the United States of America.

B. WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE CONDUCT OF THE RESPONDENTS, IS CONTRARY TO & IN DIRECT CONFLICT WITH THE RELEVANT DECISIONS OF THIS COURT, OTHER DECISIONS OF THE NINTH CIRCUIT, & OTHER CIRCUIT COURTS OF APPEALS.

Petitioners, the Allisons, do maintain that both material points of fact and relevant and applicable legal decisions were overlooked or ignored by the Court below, in its MEMORANDUM. Further, the Petitioners maintain that the decision reached by the three judge panel of the Ninth Circuit below does conflict with the decisions of the U.S. Supreme Court, other published decisions of the Ninth Circuit Court of Appeals, and with decisions of other Circuit Court of Appeals. Many of those decisions will be addressed below.

If the concept of "stare decisis", which literally means, "to abide by, or adhere to, decided cases", means anything in the Courts today, then this case, as addressed in the Ninth Circuit panel's unpublished MEMORANDUM clearly should be reviewed by the Supreme Court.

One needs only to go to *Black's Law Dictionary*, (Fifth Edition), to find that "stare decisis" indicates that it is the "policy of courts to stand by precedent and not to disturb a settled point". In *Neff v. George*, 364 I11. 306, 4 N.E.2d. 388, 391, that court defined "stare decisis" as a doctrine, that,

> "when a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same." *Horne v. Moody*, 146 S.W.2d 505, 509.

There is one Ninth Circuit Court of Appeals case which addresses the concept of "stare decisis". In *State v. Mellenberger*, 95 P.2d 709, 719, 720, the Ninth Circuit Court held as follows:

> "Under doctrine (stare decisis), a deliberate or solemn decision of the court made after argument on a question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in courts of equal or lower rank in subsequent cases where the very point is again in controversy."

The Allisons are adamant that, in this case, the principle of "stare decisis" is not being followed, in that they have provided the Court of Appeals panel with numerous decisions which are on point with this case, and support the propositions being made by the Petitioners, but those cases are either being overlooked, or are not being addressed by the panel, or, quite frankly are being ignored by the three judge panel in an attempt to reach some predetermined decision.

The Allisons are seeking, through this Petition for Writ of Certiorari, to have the Supreme Court review, as to whether that decision (MEMORANDUM) is in conflict with and contrary to other decisions of this Court, the Ninth Circuit, and other circuit courts of appeals. Those cases were either addressed in the Joint Opening Brief, Joint Reply Brief, or the Petitions for Rehearing and Rehearing En Banc. Specific cases the Petitioners maintain are in conflict with the panel's decision include: *Bevins v. Six Unknown Federal Narcotics Agents*, 403 U.S. 338; *Boethke v. Fluor Engineers & Constructors, Inc.*, 713 F.2d 1405, (9th Cir. 1983); *Economy Plumbing and Heating Co. v. United States*, 470 F.2d 585 (1982); *General Motors Leasing Corp. v. United States*, 429 U.S., 338, (1977); & *Long v. Rasmussen*, 281 F.2d 236, a case originating in the Montana U.S. District Court, but not overturned and still good law.

Other cases which have been cited by the Allisons, and which are contrary to or in direct conflict with this Ninth Circuit panel decision include: *Brushaber v. Union Pacific Railway Co.*, 240 U.S. 1; *Eisner v. MaComber*, 252 U.S. 189; *Liljeberg v. Health Services Acquisition Corp.*, 108 S.Ct. 2194; *Miller v. Standard Nut & Margarine Co.*, 284 U.S. 498; *Peck v. Lowe*, 247 U.S. 165; *Pollock v. Farmers Loan & Trust Co.*, 157 U.S. 429; *See v. City of Seattle*, 382 U.S. 541; *Stanton v. Baltic Mining Co.*, 240 U.S. 103; and *Thatcher v. Powell*, 6 Wheat. 119. All of these cases are relevant United States Supreme Court cases, which have not been overturned by the Supreme Court, and which are authoritative case law, so far as the Ninth Circuit Court of Appeals is concerned. They are precedent setting and "stare decisis" should require their application to the case at bar by the Ninth Circuit Court of Appeals.

Furthermore, there are a number of cases issued by the other Circuit Courts of Appeals, which are relevant and on-point, and which have been cited by the Allisons, previously, which have not been considered by the three judge panel's MEMORANDUM issued in this case. Those include:

United States v. Bosurgi, 530 F.2d 1105; Schering Corp. v. Home ...ce Co., 717 F.2d 4; Reece v. Scoggins, 506 F.2d 967; Beverly Hills Bancorp v. Commercial Paper Holders, 753 F.2d 1334; CMS Industries, Inc. v. L.P.S. International, 643 F.2d 289; Elias v. Connett, 908 F.2d 521; Fontenot v. Upjohn Co., 780 F.2d 1190; Friednash v. Commissioner, 209 F.2d 601; Garrett v. City & County of San Francisco, 818 F.2d 1515; Goodwin v. United States, 935 F.2d 1061; Hall v. Hawaii, 791 F.2d 759; Hancock v. Montgomery Ward LTDT, 787 F.2d 1302; James v. Gable, 732 F.2d 49; McPartin v. Commissioner, 653 F.2d 1185; and Patty Precision v. Browne & Sharpe Manufacturing, 742 F.2d 1260.

All of these cases were previously presented to the Ninth Circuit Court of Appeals in the briefs and other submissions prior to the Ninth Circuit's panel making its decision, and the Allisons maintain that they provide on-point precedent for the arguments and issues raised by the Allisons. The principle of "stare decisis" should mandate their consideration by Ninth Circuit's panel, as they are contrary to and in direct conflict with the decision that is contained in the MEMORANDUM of that panel.

Of all of the cases cited in the three judge panel's MEMORANDUM, the only case which was cited by the court, and which appeared in the Allison briefs was the Condo case. see United States v. Condo, 782 F.2d 1502. Even in that case, this court should find, upon a careful reading, that the Condo case supports their propositions and arguments made in this case. The language of Condo supports the Allisons' contentions.

In addition, Condo raises precedents of the Court cases before it, including Flores v. United States, 551 F.2d 1169; General Motors Leasing v. United States, 429 US.. 338 (See above); Camara v. Municipal Court, 387 U.S. 523; In Re Gewig, 461 F. Supp. 449; and Enochs v. Williams Packing and Navigation Co., 370 U.S. 1. All of these are also cases which the Allisons have already previously raised, in this case, in the courts below. The three

judge panel's reading of *Condo* seriously misrepresents the case. *Condo* and its precedents, cited above, support the Allisons contentions and conflict with the panel's MEMORANDUM. None of the above-indentified cases have ever been challenged or distinguished apart from the propositions raised by the Allisons, either by the named defendants nor by the Courts below.

With regard to the other cases cited by the Ninth Circuit panel, each can be fully distinguished, either factually or legally, from the Allison case presently before the court. Several even include language supportive of the Allisons.

C. WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS IS CONTRARY TO & IN DIRECT CONFLICT WITH THE RELEVANT DECISIONS OF THIS COURT, OTHER DECISIONS OF THE NINTH CIRCUIT, & THE DECISIONS OF OTHER COURTS OF APPEALS, WITH REGARD TO THE UNIQUE STATUS OF THE PETITIONERS.

With regard to the unique status of the Petitioners, this court needs to understand that Petitioner, Ronald J. Allison has, on a number of occasions, challenged the validity and legality of the jurisdiction, authority, and venue of the Internal Revenue Service, without ever receiving a response or answer, from the IRS or any Court.

In this case, Mr. Allison did specifically challenge the authority, jurisdiction and venue of the IRS directly with IRS Agent Bouldin. In response, Agent Bouldin took the actions which instigated the wrongful and illegal IRS search and seizure of real and personal properties of the Allisons, and the ultimate wrongful and illegal sale of those specific real and personal properties. As a result, the IRS not only seized some personal and business property of Mr. Allison, against whom they allegedly had federal income tax claims. The IRS also

seized the solely-owned real property of Martha J. Allison, against whom the IRS never has had any claims or controversies.

It was clearly wrong for the IRS to seize and sell real property titled in and belonging solely to Martha J. Allison, in an attempt to satisfy the alleged income tax deficiency of her spouse, Ronald J. Allison. In *Raffaele v. Granger*, 196 F.2d 620 (1952), that court held that,

> "The United States cannot take property from an innocent spouse to satisfy the tax obligation of a delinquent spouse", and further, that "A statute prohibiting suit to restrain collection of taxes does not prevent judicial interposition to prevent the collector of internal revenue from taking the property of one person to satisfy the tax obligations of another."

Mr. Allison's challenges to the Internal Revenue Service have never ever been addressed or dealt with by that agency, either through the IRS administrative actions or through lawsuits in state and federal courts. The IRS will not deal with those challenges to its authority, jursidiction, and venue, because it knows it cannot overcome those challenges.

Mr. Allison's challenges to the IRS have included the following:

> (a). Demand for Proof of Authority, Jurisdiction, & Venue in Personam & in Rem, dated November 6, 1996, and served upon the IRS Agent Bouldin by certified mail.
> (b). Affidavit of Facts Establishing Status of Citizenship, dated March 31, 1992, and filed with the Clerk and Recorder's Office in Rosebud County, Montana.
> (c). Affidavit & Notice of Ronald J. Allison, Affidavit of Declaration of Title as Holder of Quiet Title to One's Self, and Social Security Revocation of Ronald J.

Allison, all dated July 4, 1984, and which all were served by certified mail upon the IRS, the Social Security Administration, U.S. Attorney General, Health & Human Services, Treasury, the Governor of Montana, Treasurer of Montana, Montana Revenue Department, and Mr. Allison's employer, at the time, Bechtel Construction.

As of the date of this Petition for Writ of Certiorari, the Internal Revenue Service and, for that matter, the United States (federal government) have never addressed any of these challenges. Neither have the IRS or the federal government ever established any valid legal authority, jurisdiction, or venue over Mr. Allison, personally, or over his real and personal properties. Once jurisdiction is challenged, it is a valid legal maxim that the party attempting to prove it has jurisdiction must come forward with the evidence. The burden of proof is on the party asserting jurisdiction. Regarding the Internal Revenue Service's claims against Mr. Allison, they have never done so.

Furthermore, Mr. Allison has maintained, from the outset, and the IRS has never presented any evidence to the contrary, that the sections of the Internal Revenue Code (IRC) which the IRS is attempting to apply to him are being unconstitutionally applied to him and his property and that the IRS's implementing rules and regulations do not apply to someone with his status. Mr. Allison is a natural born, sovereign citizen and resident of the state of Montana and of the United States of America, but he is not a citizen and resident of the federal government (United States).

Mr. Allison is not a resident of the District of Columbia, or any federal reservation, enclave, or instrumentality, or federal military installation, nor is he within any class of persons upon whom the Internal Revenue Service has authority to impose a mandatory federal income tax.

Mr. Allison is not within the class of persons subject to the levy and distraint authority of the IRS. Under Section 26 U.S.C. 6331, the IRS has "limited" levy and distraint authority. That section states as follows:

> "Levy may be made upon the accrued salary or wages of any officer, employee, or elected official of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia . . . ."

The Code of Federal Regulations, (CFR) is also specific. It states, in pertinent part, as follows:

> 26 CFR 301.6331-1a(*ii*):
> "Salaries, wages, and other compensation of any officer, employee, or elected or appointed official of a state or territory, or of any subdivision thereof, are also subject to the levy to enforce collection of any federal tax;"
> 26 CFR 301.6331-1a(*iii*):
> "Wages of Seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy."

Mr. Allison is not among any of those categories or classes of people over whom the IRS has any valid legal levy and distraint authority or jurisdiction. They do not have any authority for implementing a levy or distraint against Mr. Allison. As they had no levy and distraint authority, then they certainly did not have any legal authority for seizure and sale of Mr. Allison's property.

Being a resident and citizen of the state of Montana makes Mr. Allison a resident of the United States of America, It does not make him a resident of the federal government entity, the United States. Mr. Allison is a "non-resident" to the state of the forum of the United States Internal Revenue Service.

Furthermore, Mr. Allison is a "nontaxpayer" and taxpayer obligations, rules and regulations do not apply to him.

The Supreme Court has previously ruled that the "income tax" is an "excise tax" which is synonymous with a "privilege tax". Mr. Allison is not asserting any privileged, but only his rights, as guaranteed by the Constitution. Since he is not exercising any "priviledge" there cannot be imposed on him and "priviledge" or "income tax". The conclusion reached in the case *Pollock v. Farmers Loan & Trust Co.*, 158 U.S. 601 (1895), that "taxation on income tax was, in its nature, an excise tax" remains good law today and should be enforced in this case. See also *Brushaber v. Union Pacific Railway Co.*, 240 U.S. 1 (1916). The term, "excise tax" is synonymous with "priviledge tax", and the two have been used interchangeably. *Foster & Co. v. Graham*, 154 Tenn. 412.

In *Idaho Gold Dredging Co. v. Balderston*, that Idaho court, at 58 ID 692, held that:

> "There can be only two kinds of taxes in the United States. A tax must be either a direct tax, in which it is subject to the rules apportionment, or a priviledge tax. A priviledge tax can never be imposed upon an exercise of a right under the constitution. The obligation to pay an excise tax is based upon the voluntary action of the person being taxed in performing the act, or enjoying the priviledge, or engagine in the occupation which is the subject of the excise, and the element of absolute and unavoidable demand is lacking."

"If you don't want to pay the tax, simply don't exercise the priviledge." *People ex rel. Attorney General v. Naglee*, 1 Cal 232. The income tax is not a tax on income, but a tax imposed upon a priviledge, measured by income. In *Flint v. Stone Tracy Co.*, 220 U.S.107 (1911) this court held:

> "Excises are taxes laid upon the manufacture, sale, or consumption of commodities within a country, upon licenses to pursue certain regulated occupations, and upon corporate privileges; the requirement to pay such taxes involves the exercise of priviledge. . . "

An individual , such as Mr. Allison, unlike a corporation, which is an artificial entity created by the government, cannot be taxed for the mere priviledge of existing and exercising his constitutional rights. The corporation is an artificial entity, which owes its very existence to and charter powers to the government. But, an individual's rights to live and own property are natural rights, for the enjoyment of which an excise tax cannot be imposed. See *Redfield v. Fisher*, 292 OR 814.

The legislature cannot name something to be a taxable priviledge unless it is first a priviledge. "The right to receive income or earnings is a right belonging to every person and realization and receipt of income is therefore not a priviledge that can be taxed." *Jack Cole Co. v. McFarland*, 337 SW2d 453.

The actions taken by the IRS against the Allisons are clearly not authorized by law. The IRS did not just exceed their jurisdiction and authority, they have none. "A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdistion over the subject matter. Any authority exercised is usurped authority, and for the exercise of such authority when the want of jurisdiction is known to the judge, no excuse is permissible." *Bradley v. Fisher*, 13 Wall. 335. "An exaction by the U.S. government, which is not based in law, statutory or otherwise, is taking of property without due process of law, in violation of the Fifth Amendment to the Constitution . . . " 26 CFR 601.106. The rights of the Allisons to be protected against ineffective levies, liens, and seizures, prior to due process of law, is recognized in the Fifth Article in Amendment to the Original Organic Constitution of the United States of America. Further the warrantless searches and

seizures of the IRS, subjected upon the Allisons are in violation of the Fourth Article in Amendment to the Constitution of the United States of America.

In making their "nontaxpayer" status claim, Petitioners rely on the ruling in Long v. Rasmussen, a Montana federal district court case. In that case, the court held:

> " . . .They (the revenue laws) relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law." See Long v. Rasmussen, 281 F.236, 238. (D. Ct. Montana, 1922).

The fact remains that Ronald J. Allison is a natural born, sovereign, unenfranchised nontaxpayer with regard to the federal government and its Internal Revenue Service. Ronald J. Allison has revoked his participation in the fraudulent Social Security scheme and thus has divested himself of any and all ties to the federal government (United States) and to its revenue raising arm, the Internal Revenue Service. Mr. Allison does not meet the definitions of a "taxpayer" or a "United States person" as is defined under Title 26 U.S.C. 7701 (a) (1), (14), and (30). Title 28 U.S.C. 1746 further clarifies the terms "Within the United States" and "Without the United States". Given those definitions, Mr. Allison is clearly "without the United States", the federal government.

Petitioner Ronald J. Allison enjoys a unique status, as far as the federal government and the Internal Revenue Service is concerned. As he is a natural born, sovereign, unenfranchised nontaxpayer citizen and resident of the state of Montana and of the United States of America, but is "without" the United States, the federal government cannot legally impose federal income tax statutes upon him. He does not fit within their definitions, rules, and regulations.

D. WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS IS ERRONEOUS WITH REGARD TO THE CONDUCT OF THE INTERNAL REVENUE SERVICE & THE U.S. DISTRICT COURT BELOW, AS TO CONSTITUTIONAL VIOLATIONS, VIOLATIONS OF STATUTORY LAW, & RELEVANT RULES & REGULATIONS.

Previously, the Petitioners, the Allisons have demonstrated that the conduct of the Internal Revenue Service and of the U.S. District Court Judge violated their Constitutional rights under the 4th, 5th, and 7th Articles in Amendment to the Constitution of the United States of America.

The Petitioners also maintain that both the IRS and the Court violated statutory law and the federal government agency's implementing rules and regulations. With regard to the IRS, this Court only needs to examine the fraud perpetrated upon the federal district court through the submission of fraudulent "Notices of Sale" and "Delegation Orders" that the IRS submitted as evidence in this case. In addition to the search and seizure of Allison property being illegal, the sale of that property should be found invalid, for the violations of IRS codes, rules and regulations.

It should be noted by this Court that the Petitioners raised some thirteen separate violations of IRS statutes, rules and regulations, in their conduct against the Allisons, even prior to the sale, the search, and the seizure. None of those violations have ever been addressed, and the federal court below sanctioned such actions, by dismissing the case as it did.

The United States District Court for the District of Montana, Judge Shanstrom presiding, is just as culpable as the IRS, in allowing the violations of Constitutional protections, Due Process, and violations of applicable statutes, rules, and regulations. Shanstrom never should have issued a Writ of Entry

as a basis for a search and seizure by the IRS. A Warrant and a Summons should have been required prior to the IRS taking any action against the Allisons. Then, when the case was removed, by the federal government, from state court to federal district court, Shanstrom should have never been allowed to sit on the case, given his prior involvement in the issuance of the Writ of Entry. Shanstrom should have recused himself, or been disqualified by the court from sitting on the case, given his demonstrated bias against the Allisons. He should have never been allowed to sit in judgment on his prior actions. To cover his tracks in the case, he chose to deny all of the motions of the Petitioners and to dismiss all causes of action that the Petitioners had against the named Defendants.

The IRS actions were as a direct result of Mr. Allison challenging the authority, jurisdiction and venue of the Internal Revenue Service over him and his property. The IRS actions and conduct were of a vindictive nature and showed actual malice toward the Allisons.

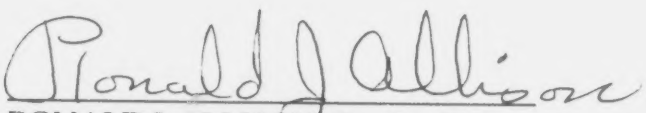
The actions of the District Court were just as reprehensible, in that it condoned the violation of the Allison's Constitutional rights, of Due Process, and violations of federal statutory law, and IRS implementing rules and regulations.

Those above enumerated violations constitute a very compelling case for the review of the Ninth Circuit Court of Appeals three judge panel's MEMORANDUM by the United States Supreme Court, under this Petition for a Writ of Certiorari.

CONCLUSION

For the reasons presented hereinabove, a WRIT OF CERTIORARI should issue, from theUnited States Supreme Court, to review the MEMORANDUM of the Ninth Circuit Court of Appeals three judge panel of Justices Wallace, Fernandez, & McKeown, dated September 26, 2000, as well as to review the ORDER of the Ninth Circuit Court of Appeals three judge panel of Justices Wallace, Fernandez, & McKeown, dated January 2, 2001.

Respectfully submitted this 29th day of March, 2001.



RONALD J. ALLISON, Pro Se, for
Ronald J. Allison, Petitioner, &
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390 North 10th Avenue
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1-406-356-2904

Supreme Court, U.S.
FILED

(2)

001516 APR 2 2001

OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

RONALD J. ALLISON & MARTHA J. ALLISON,

Petitioners,

vs.

THE UNITED STATES OF AMERICA, et.al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE NINTH CIRCUIT COURT OF APPEALS

PETITIONERS' APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

For the Petitioners:

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APPENDIX TABLE OF CONTENTS

Document No.:	Document:
A-1	MEMORANDUM of the Ninth Circuit Court of Appeals three judge panel of Justices Wallace, Fernandez, & McKeown, issued in Ninth Circuit Cause No. 99-35708, on September 26, 2000
A-2	ORDER of the Ninth Circuit Court of Appeals three judge panel of Justices Wallace, Fernandez, & McKeown, issued January 2, 2001
A-3	ORDER of the United States District Court for the District of Montana, Judge Jack Shanstrom presiding, in Cause No. CV-99-BLG-JDS, issued June 29, 1999

APPENDIX "A-1"

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD JESSE ALLISON; MARTHA J. ALLISON

Plaintiffs-Appellants,

v.

CITY OF FORSYTH, Rosebud County, MT; LARRY BURNS, Larry's Service Center, Baker, Montana; UNITED STATES INTERNAL REVENUE SERVICE, Department of the United States of America,

Defendants-Appellees.

No. 99-35708

D.C. NO. CV-99-00025-JDS

MEMORANDUM[1]

Appeal from the United States District Court
for the District of Montana
Jack D. Shanstrom, Chief Judge, Presiding

Submitted September 11, 2000[2]

Before: WALLACE, FERNANDEZ, and McKEOWN, Circuit Judges.

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1 This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3

2 Because the panel unanimaously finds this case suitable for decision without oral argument, we deny the Allisons' motion for oral argument and deem the motion requesting a longer oral argument moot. *See* Fed. R. App. P. 34(a)(2).

Ronald Jesse Allison and Martha J. Allison appeal pro se the district court's order dismissing defendants Larry Burns and the City of Forsyth based on res judicata and granting summary judgment in favor of the Internal Revenue Service ("I.R.S.") in the Allisons' claims seeking to quiet title and damages in connection with the I.R.S. levy and sale of personal and real property. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo dismissals based on res judicata, *see Palomar Mobilehome Park Ass'n v. City of San Marcos*, 989 F.2d. 362, 363 (9th Cir. 1993), and summary judgments, *see Margolis v. Ryan*, 140 F3d. 850, 852 (9th Cir. 1998). We may affirm on any basis supported by the record. *See PCCE, Inc. v. United States*, 159 F.3d 425, 427 (9th Cir. 1998). We Affirm.

The district court properly dismissed the claims against Larry Burns and the City of Forsyth based on res judicata given the Montana state court judgment in favor of these parties. *See Palomar*, 989 F.2d at 363.

The district court also properly dismissed Martha Allison's third party suit for wrongful levy under 26 U.S.C. § 7426 because she did not commence the action within nine months of the levy. *See Fidelity & Deposit Co. of Md v. City of Adelanto*, 87 F.3d 334, 335 (9th Cir. 1996).

The district court properly granted summary judgment on the Allisons' quiet title claim under 28 U.S.C. § 2410 because the I.R.S. no longer had an interest in the property when the Allisons commenced their action. *See Hughes v. United States*, 953 F.2d 531, 538 (9th Cir. 1992).

Although the Allisons made general allegations of fraud, their claim under 26 U.S.C.. § 7433 failed because these allegations were not supported by evidence and were not sufficient to state a claim under that section. *See Miller v. United States*, 66 F.3d 220, 222 (9th Cir. 199 5)indicating that Section 7433 allows for a civil action when an I.R.S. officer recklessly or intention-

ally disregards provisions of the I.R.S. Code).

The Allisons contend that the I.R.S. violated their Fourth Amendment right against unreasonable search and seizure because the I.R.S. possessed a writ of entry and not a search warrant. This contention lacks merit. *See United States v. Condo*, 782 F. 2nd 1502, 1504-06 (9th Cir. 1986). Similarly, their additional constitutional contentions challenging the collection of their taxes and the district court proceedings also lack merit. *See Wages v. Internal Revenue Serv.*, 915 F.2d 1230, 1235 (9th Cir. 1990).

The district did not abuse its discretion in denying the Allisons' motions for recusal, *see United States v. Scholl*, 166 F.3d 964, 977 (9th Cir.), *cert. denied*, 120 S. Ct. 176 (1999), and motion for additional discovery under Fed. R. Civ. P. 56(f), *see Bank of Am. v. Pengwin*, 175 F.3d 1109, 1117-18 (9th Cir.), *cert. denied sub nom, Fishing Vessel Owners & Marine Ways v. Bank of Am.* 120 S. Ct. 174 (1999). In addition, the district court properly denied the Allisons' motion for remand for want of removal jurisdiction. *See Audette v. Local 24, Int'l Longshoremen's and Warehousemen's Union*, 195 F.3d 1107, 1111 (9th Cir. 1999).

The Allisons' remaining contentions lack merit.

AFFIRMED.

FILED
SEPTEMBER 26, 2000
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FILED
JANUARY 16, 2001
LOU ALEKSICH, JR., CLERK
By_____
Deputy Clerk

APPENDIX"A-2"

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD JESSE ALLISON; MARTHA J. ALLISON

Plaintiffs-Appellants,

v.

CITY OF FORSYTH, Rosebud County, MT; LARRY BURNS, Larry's Service Center, Baker, Montana; UNITED STATES INTERNAL REVENUE SERVICE, Department of the United States of America,

Defendants-Appellees.

No. 99-35708

D.C.# CV-99-00025-JDS
Montana (Billings)

ORDER

Before: WALLACE, FERNANDEZ, and McKEOWN, Circuit Judges.

Appellants' petition for panel rehearing is denied.

Appellants' motion to recall and stay the mandate is denied as unnecessary.

Appellants' motion to amend, correct, and clarify the official court record filed on December 5, 2000 is denied.

No further filings shall be accepted in this closed appeal.

FILED
JANUARY 2, 2001
CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

APPENDIX "A-3"

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

RONALD J. ALLISON; and MARTHA J. ALLISON — Cause No. CV 99-25-BLG-JDS

Plaintiffs

v. ORDER

CITY OF FORSYTH, ET AL.

Defendants

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1. Background

This quiet title action was originally filed in the Montana Sixteenth Judicial District Court, Rosebud County, by Ron and Martha Allison against the City of Forsyth, Larry Burns and Larry's Service Center, United States of America and the IRS, and anyone who might have an interest in the real property at issue. Because the IRS and the United States were named as parties, the case was removed to this Court. There are a variety of motions which are pending.

At the outset the Court notes that this case against the City or Forsyth and Larry Burns is an exact duplicate of a case the Allisons filed against the City of Forsyth and Larry Burns back in 1997 in the Sixteenth Judicial District, Rosebud County. The District Court dismissed the Allisons' cause of action and such dismissal was affirmed by the Montana Supreme Court.

2. Motion for recusal or, in the alternative, for the disqualification of Judge Jack D. Shanstrom from hearing this matter.

The Allisons move under 28 U.S.C. Section 144 and Section 455 for recusal and disqualification of the undersigned. The Allisons base their motion upon the fact that I have ruled against them in several different lawsuits.

Judicial rulings alone almost never constitute a basis for bias or impartiality. Liteky v. United States, 510 U.S. 540, 555 (1994); Pau v. Yosemite Park and Curry Co., 928, F.2d 880, 885 (9th Cir. 1991). The Allisons' motion for recusal and disqualification shall be denied.

3. Defendant Larry Burns' motion to dismiss and request for costs and damages.

Defendant Larry Burns/Larry's Service Center moves to dismiss plaintiffs' complaint, contending the case has been previously tried in Rosebud under Cause No. DV 97-124, and the court found for all the defendants and dismissed the Allisons' complaint.

Attached to the City of Forsyth's motion to dismiss is a copy of a Supreme Court opinion, filed on June 9, 1998, in the Allisons' Rosebud county case. Larry Burns and Larry's Service Center were named as defendants in that quiet title action. In the four-page, unpublished opinion, the Montana Supreme Court affirmed dismissal of Allisons' complaint. The last sentence in the opinion, quoted below, is relevant to Burns' and the City of Forsyth's motions to dismiss.

> Having viewed the allegations in the light most favorable to the Allisons, and accepting the stated facts in their complaint as true, we conclude that the Allisons can prove no set of facts entitling them to relief against

the City or Burns, and that dismissal of the complaint was proper.

This current action against Larry Burns and Larry's Service Center shall be dismissed based upon res judicata. The Allisons litigated the same claim against Larry Burns in state court and lost. They shall not be permitted to relitigate their claim against Burns in this action.

3. The City of Forsyth's motion to dismiss.

The City of Forsyth moves, pursuant to Fed. R. Civ. P. 12(b), to dismiss the complaint for the following reasons: (a) the complaint fails to state a claim upon which relief can be granted against the City of Forsyth; (b) the complaint is barred by the applicable statute of limitations; (c) the complaint is barred by the doctrine of res judicata; and (d) the complaint is barred by the doctrine of collateral estoppel.

Based upon the Montana Supreme Court opinion quoted above, the instant action against the City of Forsyth is likewise barred by the doctrine of res judicata.

4. Plaintiffs' motion for remand from the United States District Court to the Sixteenth Judicial Court.

The Allisons' first contend that the government failed to comply with 28 U.S.C. §§ 1446 (c) (4) and (c) (5). These sections apply only to removal of criminal prosecutions from state court and thus, are inapplicable in the instant situation.

The Allisons also complain that the United States failed to comply with 28 U.S.C. Section 1447(d), which requires the removing party to give notice of such removal to all adverse parties. The Allisons contend that the United States did not give notice to the City of Forsyth or Larry Burns.

In response, the United States first argues that at the time it filed the notice of removal, the co-defendants had not filed a notice of appearance and, therefore, there was no address of record. Second, the United States contends that co-defendants Larry Burns and the City of Forsyth are not "adverse" parties. The United States also argues that even if it failed to give notice to a co-defendant, such failure to give notice is not fatal to the removal of the action because subsequently the United Sates has served the co-defendants, both Larry Burns and the City of Forsyth, with copies of the notice of removal.

Finally, the Allisons claim that this case was improperly removed, "due to a lack of subject matter jurisdiction over both Mr. Allison and over Mr. Allison's real and personal properties." In response, the United States argues that removal jurisdiction includes the right of the United States District Court to determine that a suit against the United States should be dismissed with prejudice for lack of subject matter jurisdiction.

All of the Allisons arguments in support of their motion to remand are without merit. Consequently, the motion shall be denied.

5. Allison's motion to reconsider.

On April 9, 1999, the Court entered an order denying plaintiffs' request for entry of default against the City of Forsyth and Larry Burns. The Court did so because at the time the request for entry of default was filed, both the City of Forsyth and Larry Burns had filed motions to dismiss. The Court found that while these motions were pending, the time within which the defendants must serve a responsive pleading is tolled. Plaintiffs now move for reconsideration of that order on the grounds that while both defendants filed motions to dismiss, they were not timely filed.

The summons served in this case afforded the defendants 20 days in which to answer or otherwise plead. The file reflects that defendant Burns' motion to dismiss was filed on the 20th day after service and is thus, timely. Defendant City of Forsyth's motion was filed on the 22nd day after service and, while technically untimely, it was filed before the plaintiff requested entry of default. Thus, the motion for reconsideration shall be denied.

6. The United States' motion to dismiss or, in the alternative, motion for summary judgment.

Under 28 U.S.C. Section 2410, the United States may be named a party in any civil action or suit in any district court to quiet title to real or personal property on which the United States has or claims a mortgage or other lien. This waiver of sovereign immunity under Section 2410 is strictly limited and it does not apply in situations where, as here, the government has already sold the property and no longer claims any interest in it. Hughes v. United States, 953 F.2d 531, 538 (9th Cir. 1992). Thus, Allisons' case cannot be maintained under 28 U.S.C. Section 2410 because the property has been long since sold.

26 U.S.C. Section 7433 allows a taxpayer to sue for civil damages for certain unauthorized collection actions. As a prerequisite to suit under 7433, however, a plaintiff must exhaust administrative remedies available to him or her within the Internal Revenue Service. Here, Allison has presented no evidence of such exhaustion of administrative remedies.

Finally, 26 U.S.C. Section 7426 allows a person, other than the taxpayer, who claims an interest in or lien on property that has been sold pursuant to an IRS levy, to bring claim against the United States that such property was wrongfully levied upon. Martha Allison contends that the real property that was levied upon and sold was in her name and not the

name of the taxpayer, her husband Ron Allison. Her claim must fail because a claim for wrongful levy must be brought within nine (9) months of the levy on the property. 28 U.S.C. Section 7426(h) and Section 6532 (c) (1). It is undisputed that the levy on the property occurred on March 6, 1997, and this litigation was not commenced until February of 1999, after the statute of limitations had expired. Moreover, in the Allisons' bankruptcy case, Bankruptcy No. 97-12264-7, Adversarial Case No. 98-00102, Judge Peterson determined that Martha Allison "has no legally recognized interest in the real property as nominee" and thus, cannot bring action under section 7426. The government's motion shall therefore be granted.

7. Plaintiff's motion to defer consideration of the United States' motion to dismiss or, in the alternative, motion for summary judgment.

The Allisons move under Fed.R.Civ.P. 56(f) for an order which defers ruling on the government's motion to dismiss/summary judgment in order to enable the plaintiffs to complete discovery, including the taking of depositions or filing of written interrogatories. Allison contends that he seeks to establish through discovery the following: (a) that the IRS assessments against Allison have not been establish and recorded as required by 26 U.S.C. Section 6203; (b) that the required notices of assessment and demand for payment were not issued or properly served upon the plaintiffs for the tax years at issue; (c) that the statutory notices of deficiency were not issued or properly served upon the plaintiffs for the tax years at issue; (d) that a written determination was not made that a substantially higher bid for the subject property could be obtained by conducting the sale outside of the county of seizure; and (e) that a determination was not made establishing the fair market value of the subject property.

The government argues that under Rule 56(f), an opposing party must make clear what information is sought and how it will preclude summary judgment. Garrett v. City and County of San Francisco, 818 F.2d 1515, 1518 (9th Cir. 1987). In addition, an affidavit in support of a Rule 56(f) motion must explain why facts precluding summary judgment cannot be presented.

For the following reasons the government contends that the Allisons have failed to make clear how the information sought will preclude summary judgment and further, why any facts precluding summary judgment cannot be presented. First, the government alleges that all of the information sought has already been provided to the Allisons in their bankruptcy litigation. Second, the issues regarding the procedural regularity of the tax assessments, levies, and sales were addressed in the bankruptcy court adversary proceeding which upheld the assessments and post-petition levies on pension funds and cannot be relitigated in this case. Finally, and more importantly, the facts the Allisons seek to establish through discovery do not address the underlying problem relating to lack of jurisdiction and statute of limitations because the property has been levied upon and sold, The Court concurs with the government's analysis.

8. Plaintiffs' motion to defer consideration of motions to dismiss of defendant City of Forsyth and Larry Burns.

Plaintiffs' move for additional time in which to respond to the motions to dismiss contending that they were never properly served with copies of the motions. Because this action against Burns and the City of Forsyth is barred by res judicata, the Court shall not afford the Allisons any additional time in which to respond to the motions to dismiss.

Based of the foregoing IT IS HEREBY ORDERED:

1. Plaintiffs' motion for recusal or, in the alternative, for disqualification (Doc. No. 11) is DENIED.

2. Defendant Larry Burns' motion to dismiss (Doc. No. 13) is GRANTED.

3. Defendant City of Forsyth's motion to dismiss (Doc. No. 16) is GRANTED.

4. Plaintiffs' motion to remand (Doc. No. 24) is DENIED.

5. Plaintiffs' motion to reconsider (Doc. No. 25) is DENIED.

6. Defendant United States' motion to dismiss or, in the alternative, motion for summary judgment (Doc. No. 26) is GRANTED.

7. Plaintiffs' motion to defer consideration of the United States' motion to dismiss or, in the alternative, motion for summary judgment (Doc. No. 32) is DENIED.

8. Plaintiffs' motion to defer consideration of motions to dismiss of defendant City of Forsyth and Larry Burns (Doc. No. 37) is DENIED.

9. Plaintiffs' causes of action against all the defendants are dismissed with prejudice.

The Clerk shall enter judgment accordingly.

The Clerk shall forthwith notify the parties of the making of this Order.

DONE and DATED this 29th day of June, 1999.

/S/
Jack D. Shanstrom
Chief United States District Judge

FILED
JUNE 29, 1999
LOU ALEKSICH, JR., CLERK
By_____
Deputy Clerk